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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/420,616	10/18/1999	WILLIAM JOSEPH BEYDA	99P7918US	3051

7590 01/10/2005  
SIEMENS CORPORATION  
INTELLECTUAL PROPERTY DEPARTMENT  
186 WOOD AVENUE SOUTH  
ISELIN, NJ 08830

EXAMINER

DUONG, FRANK

ART UNIT	PAPER NUMBER
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2666

DATE MAILED: 01/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/420,616

Applicant(s)

BEYDA ET AL.

Examiner

Frank Duong

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07 October 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-14 and 16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 and 16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>10/07/04</u> . | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. This Office Action is a response to communications dated 10/07/04. Claims 1-14 and 16 are pending in the application.

#### ***Information Disclosure Statement***

2. The information disclosure statement filed 10/07/04 complies with the provisions of 37 CFR 1.97, 1.98 and MPEP § 609. It has been considered and placed in the application file.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 4 and 6-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 4 recites the limitation "said adjusting means" in lines 1-2. There is insufficient antecedent basis for this limitation in the claim.

Claim 6 recites the limitation "said adjusting means" in lines 1-2. There is insufficient antecedent basis for this limitation in the claim.

Claims 7-8 variously depend from their indefinite parent claim 6.

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 1-14 and 16 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,747,999. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1-16 of the '999 patent teaches essentially the same elements/steps as claims 1-2, 5-6, 9-10, 13, 14 and 16 of the current application as corresponding below:

**Instant application claims 1-2, 5-6, 9-10, 13, 14 and 16** calls for elements/steps for *"receiving one or more information packets, said receiving including storing said one or more information packets in a jitter buffer"* and means/steps for *"increasing a length of said one or more information packets for input to said jitter buffer based on a threshold size of said jitter buffer"*.

**'999 patent claim 1** claims *"receiving data into a jitter buffer"* and *"adjusting a depth of said jitter buffer by determining a parameter related to a measured size of the*

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*jitter buffer using a rise value, said rise value comprising a monotonically increasing value that accounts for the variance of past jitter”.*

A comparison between the above claims would render a mere difference in wording. Such difference is recognized to be an obvious variance to those skilled in the art.

In addition, a comparison between claims 1-14 and 16 of the instant application and claims 3-14 of the '999 patent would render the claimed invention of the instant application is broader than the claimed invention of the '999 patent by omitting certain limitation such as “jitter buffer cache”. However, it has been held that the omission of an element and its function is an obvious expedient if the remaining elements perform the same function as before. In re Karlson, 136 USPQ 184(CCPA). Also note Ex parte Rainu, 168 USPQ 375 (Bd. App. 1969); omission of a reference element whose function is not needed would be an obvious variation.

5. Claims 1-14 and 16 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-10 of U.S. Patent No. 6,683,889. Although the conflicting claims are not identical, they are not patentably distinct from each other because claims 1-16 of the '999 patent teaches essentially the same elements/steps as claims 1-2, 5-6, 9-10, 13, 14 and 16 of the current application as corresponding below:

**Instant application claims 1-2, 5-6, 9-10, 13, 14 and 16** calls for elements/steps for *“receiving one or more information packets, said receiving including*

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*storing said one or more information packets in a jitter buffer” and means/steps for “increasing a length of said one or more information packets for input to said jitter buffer based on a threshold size of said jitter buffer”.*

**‘889 patent claim 1 claims** *“receiving data into a jitter buffer” and “adjusting a depth of said jitter buffer if said jitter buffer occupancy threshold is crossed, said adjusting comprising increasing or decreasing periods of silence”.*

A comparison between the above claims would render a mere difference in wording. Such difference is recognized to be an obvious variance to those skilled in the art.

In addition, a comparison between claims 1-14 and 16 of the instant application and claims 1-10 of the ‘889 patent would render the claimed invention of the instant application is broader than the claimed invention of the ‘999 patent by omitting certain limitations such as “setting a jitter buffer occupancy threshold” and “jitter buffer cache”. However, it has been held that the omission of an element and its function is an obvious expedient if the remaining elements perform the same function as before. In re Karlson, 136 USPQ 184(CCPA). Also note Ex parte Rainu, 168 USPQ 375 (Bd. App. 1969); omission of a reference element whose function is not needed would be an obvious variation.

### **Conclusion**

6. Any inquiry concerning this communication or earlier communications from the

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examiner should be directed to Frank Duong whose telephone number is (571) 272-3164. The examiner can normally be reached on 7:00AM-3:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Seema Rao can be reached on (571) 272-3174. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Frank Duong', with a stylized flourish at the end.

Frank Duong  
Examiner  
Art Unit 2666

January 4, 2005